

EXHIBIT 1

DEPOSITION OF
KEVIN W. THARP
HENDERSON V. UNITED STUDENT AID FUNDS
TAKEN ON
MARCH 8, 2016



PHONE 855.525.3860 | 323.938.8750

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3 CASE NO.: 3:13-cv-1845-JLS-BLM
4 SHYRIAA HENDERSON, on behalf)
5 of herself and all others)
6 similarly situated,)
7)
8 Plaintiff,)
9)
10 vs.)
11)
12 UNITED STUDENT AID FUNDS, INC.,)
13 D/B/A USA FUNDS,)
14)
15 Defendant.)
16)
17 The 30 (b)(6) deposition upon oral examination
18 of KEVIN W. THARP, a witness produced and sworn
19 before me, Linda C. Callahan, a Court Reporter and
20 Notary Public in and for the County of Hamilton,
21 State of Indiana, taken on behalf of the Plaintiff
22 in the offices of Alliance Court Reporting, 13295
23 Illinois Street, Suite 218, Carmel, Hamilton
24 County, Indiana, on the 8th day of March, 2016,
25 commencing at 9:05 a.m., pursuant to the Federal
Rules of Civil Procedure, and by Notice of the
parties as to time and place thereof.
Reported by:
LINDA C. CALLAHAN
No. 16-39251

1 A-P-P-E-A-R-A-N-C-E-S
2
3 FOR THE PLAINTIFF:
4 EDELSON PC
5 BY: NICK LARRY, ESQ.
6 350 North LaSalle Street
7 Suite 1300
8 Chicago, IL 60654
9
10 FOR THE DEFENDANT:
11 VEDDER PRICE
12 BY: LISA M. SIMONETTI, ESQ.
13 1925 Century Park East
14 Suite 1900
15 Los Angeles, CA 90067
16
17 ALSO PRESENT:
18 Julie Ragsdale, Esq.
19 USA Funds
20
21 I-N-D-E-X O-F E-X-A-M-I-N-A-T-I-O-N
22 PAGE
23
24 BY MR. LARRY: 3
25
26 I-N-D-E-X O-F E-X-H-I-B-I-T-S
27 PAGE
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29 1 - Notice, attachments 6
30 2 - Fifth Restated Guarantee Agreement 22
31 3 - 2015 Collections Audit Guide 70
32 4 - 8-5-10 St. Peters/Lauth letter 85
33 5 - 2014 Collections Audit Guide 128
34 6 - Audit Report 131
35

1 KEVIN W. THARP,
2 having first been duly sworn,
3 was examined and testified as follows:
4
5 EXAMINATION
6
7 BY MR. LARRY:
8 Q. Would you please state your full name for the
9 record.
10 A. Kevin W. Tharp.
11 Q. And can you spell Tharp, please.
12 A. T-H-A-R-P.
13 Q. And have you ever been deposed before?
14 A. I have.
15 Q. Okay. Well, even though you've been deposed
16 before, I'll still going to run through some basic
17 rules so that we're all on the same page. As I'm
18 sure you remember, the general format is I'm going
19 to ask you question, you're going to answer. From
20 time to time, defendant's attorney may object. If
21 that happens, you need to wait for her to finish
22 her objections, and then generally speaking, I'm
23 going to ask that you go ahead and answer the
24 question unless she's instructing you not the
25 answer.

1 I'll probably ask some questions that don't
2 make any sense, whether it's because of the way I
3 phrase them, because I haven't spoken clearly, or
4 because the question just itself inherently
5 doesn't make sense. If that's the case, ask me to
6 either repeat the question or just say that you
7 don't understand and I'll try to ask a better
8 question.
9 Because there's a court reporter here, you
10 need to speak clearly, everything is being
11 transcribed, and all your answers need to be
12 spoken, no head nodding, no huh-uhs or shoulder
13 shrugs or anything like that. For the same
14 reason, you need to wait until I finish asking my
15 question before you start to answer; that way,
16 we're not talking over each other, and I'll do my
17 best to not ask questions while you're still
18 answering.
19 We'll take a few breaks throughout the day.
20 We'll probably take a lunch break. If you need to
21 take a break at any point, just say so, whether
22 it's just to get up and stretch your legs. The
23 only restriction is if I've asked a question and
24 you haven't answered it yet, I would ask that you
25 not try to take breaks at those times, but

<p style="text-align: right;">Page 9</p> <p>1 A. I do not. 2 Q. Do you remember what that case was about at all? 3 A. Administrative wage garnishment. 4 Q. And it was just -- is it just the one case where 5 you've testified in court? 6 A. I've testified on several different occasions 7 over the years. 8 Q. Any idea how many times? 9 A. Five or six, probably. 10 Q. Do you remember any of the names of the lawsuits? 11 A. I do not. 12 Q. Okay. Was USA Funds a defendant in any of those 13 lawsuits? 14 A. They were. 15 Q. Do you know how many of them? 16 A. I do not. 17 Q. Did you do anything to prepare for your deposition 18 today? 19 A. I have. 20 Q. And what did you do? 21 A. I met with counsel, and they outlined for me the 22 deposition process. 23 Q. Did you do anything else? 24 A. Reviewed some of the documents that have been 25 filed with the court.</p>	<p style="text-align: right;">Page 11</p> <p>1 you're testifying about today? 2 A. He did not. 3 Q. Is USA Funds your current employer? 4 A. Yes. 5 Q. How long have you been with USA Funds? 6 A. 34 years. 7 Q. And what is your current job title? 8 A. Manager, delinquency and default management. 9 Q. And is delinquency and default management a 10 business unit or division of USA Funds? 11 A. It's part of the FFELP division. 12 Q. And what do you generally do as a manager in the 13 delinquency and default management group? 14 A. I have responsibility for overseeing the 15 portfolio of both our delinquency and defaulted 16 loans. I work with our servicer in -- in 17 administering that program. 18 Q. When you say our servicer, are you referring to 19 Navient? 20 A. I am. 21 Q. Are there any other services you work with? 22 A. No. 23 Q. You mentioned Rick. Do you have any other 24 immediate supervisors? 25 A. He's my immediate supervisor.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Do you recall which documents? 2 A. Not all the documents, but the depositions, the 3 interrogatories. 4 Q. That's all you can recall? 5 A. Yes. 6 Q. Did you talk to anyone from USA Funds who isn't a 7 lawyer in preparation for today's deposition? 8 A. My boss. 9 Q. And who is your boss? 10 A. Rick Buckingham. 11 Q. Buckingham spelled like the palace? 12 A. Yes. 13 Q. And what is Rick's job title? 14 A. He's vice president of FFELP operations. 15 Q. And what did you talk to Rick about in preparation 16 for today's deposition? 17 A. Just that this litigation was going on and that I 18 was being deposed and generalities of the suit 19 that's been brought. 20 Q. Did you talk to any other non-attorneys from USA 21 Funds in preparation for today's deposition? 22 A. No. 23 Q. And when did you talk to Rick? 24 A. Several times over the last week. 25 Q. Did Rick provide you with any of the information</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Do you have any immediate subordinates? 2 A. No. 3 Q. How long have you had your current job title? 4 A. Probably 20 years. 5 Q. What does USA Funds do, generally speaking? 6 A. We're a guarantor in the FFELP program, national 7 guarantor. 8 Q. What does a guarantor do with respect to FFELP 9 loans? 10 A. When a student receives a loan through a lender, 11 those loans are normally guaranteed by different 12 agencies. USA Funds happens to be one of those 13 agencies. In the event that the loan defaults, 14 that guarantor will pay that default claim to the 15 lender, and then we assume responsibility for 16 that loan. 17 Q. And USA Funds also acts as a guarantor for private 18 loans; correct? 19 A. We have a very small private loan portfolio. 20 Q. Are you able -- how big is the FFELP loan 21 portfolio? 22 A. Just under seven billion. Now, that's the 23 default portfolio. 24 Q. Are you -- what about the FFELP delinquency 25 portfolio?</p>

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1 A. It's much larger. Those are loans that are still
2 in the hands of lenders and servicers.
3 Q. So what is USA Funds' role with respect to
4 delinquent loans?
5 A. When a loan becomes 60 days or greater past due,
6 so these would be delinquent loans, not
7 defaulted, the lender would file a request with
8 the guarantor to help resolve the delinquency.
9 Q. So what does USA Funds do to help resolve the
10 delinquency?
11 A. We contract with Navient, it's actually a company
12 called Student Assistance -- I'm trying to think.
13 We call them SAC, Student Assistance Corporation,
14 and they're a division of Navient.
15 Q. And what has USA Funds contracted Student
16 Assistance Corporation to do with respect to the
17 student loans?
18 A. They would be contracted to contact the borrower
19 and make arrangements for the borrower to bring
20 the account current and/or help the borrower with
21 deferment, forbearance options if the borrower is
22 eligible and entitled.
23 Q. So let me know if I understand this right: As far
24 as delinquent FFELP loans are concerned, once the
25 60-day past due period hits, USA Funds comes in

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1 and essentially begins overseeing the servicing
2 process and brings in Student Assistance Corp to
3 service the loan until it's no longer delinquent?
4 A. We've contracted with Student Assistance
5 Corporation to do the work, to manage the loans,
6 make the calling efforts, and that's what we've
7 contracted with them to do.
8 Q. Once the loan is no longer delinquent, what
9 happens?
10 A. It stays with the lender or the servicer, and the
11 borrower would continue whatever is going on in
12 that borrower's history. He would either
13 continue to make payments; if he went back to
14 school, he would be given a deferment, the loan
15 would be considered in good standing and not
16 delinquent.
17 Q. And so once it's no longer delinquent, USA Funds
18 and Student Assistance Corp, are they -- do they
19 continue to deal with it on a day-to-day basis?
20 A. They do not.
21 Q. Okay. So you said the FFELP default portfolio is
22 about \$7 billion. Do you have any idea how big
23 the FFELP delinquency portfolio is?
24 A. Not offhand, I do not.
25 Q. Is it multiples of the seven billion?

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1 A. Yeah, it's -- I don't know.
2 Q. What about the private portfolio?
3 A. Very small.
4 Q. Do you have any idea how small?
5 A. I do not.
6 Q. Would it be less than a billion?
7 A. Oh, yes.
8 Q. Okay. So with regard to the FFELP default
9 loans, what does Navient do for USA Funds?
10 A. They contract with outside collection agencies to
11 pursue those loans for payment.
12 Q. And you said there are no other servicers that USA
13 Funds works with to do that; correct?
14 A. That's correct.
15 Q. So going back, with the exclusion of -- well, just
16 for purposes of clarity for the rest of the
17 deposition, when I'm referring to Navient, I know
18 that previously, they were part of Sallie Mae.
19 I'm referring to the same entity going back; does
20 to make sense?
21 A. Yes.
22 MS. SIMONETTI: The prior entity was
23 Sallie Mae, Inc.
24 MR. LARRY: Yes, Sallie Mae.
25 MS. SIMONETTI: And the current

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1 entity is Navient Solutions, Inc., and I think in
2 the other deposition, we used NSI rather than the
3 Navient name.
4 MR. LARRY: I'm fine using either;
5 whichever is easiest for you, Navient or NSI.
6 MS. SIMONETTI: As long as we
7 understand that we're talking about Navient
8 Solutions Inc., is that --
9 MR. LARRY: That's correct.
10 MS. SIMONETTI: Is it?
11 MR. LARRY: Yes.
12 Q. And actually, to clarify, is -- well, actually --
13 never mind. So when I say Navient, I'm referring
14 to NSI and also previously Sallie Mae, Inc. when
15 it was known as that.
16 For how long has USA Funds been acting as a
17 guarantee agency on federal student loans?
18 A. Sixty years.
19 Q. And how far back has Navient, NSI, Sallie Mae,
20 been the exclusive servicer of USA Funds, FFELP
21 default loans?
22 A. Since 2003, 2002.
23 Q. And were there other servicers prior to that,
24 then?
25 A. There was a company called USA Group.

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1 called on?
2 A. I did not.
3 Q. So if I were to read you those numbers, they
4 wouldn't mean anything to you?
5 A. They would not mean anything to me.
6 Q. Did you look into how the vendors obtained the
7 telephone numbers that they called?
8 A. I did not.
9 Q. So as you sit here today, you have no idea how
10 Pioneer Credit Recovery obtained Ms. Henderson's
11 cell phone numbers?
12 A. No.
13 Q. And the same is true for GC Services, General
14 Revenue Corporation, National Enterprises, and NCO
15 Group?
16 A. Yes.
17 Q. Going back to Exhibit 6, are you able to tell --
18 is there anything from the face of this document
19 that tells you which vendor this come from?
20 A. Not for me, it did not.
21 Q. Okay. When I was asking about the specific
22 vendors who called earlier, you mentioned that
23 there was a document reviewed -- you reviewed that
24 listed off the vendors who called the plaintiff;
25 correct?

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1 A. Yes.
2 Q. Do you recall which document you were talking
3 about?
4 A. It was an e-mail that I had received from
5 Navient.
6 Q. Okay. So aside from that e-mail, have you
7 received any -- actually, let me take a step back.
8 When you said you received the Navient, you mean
9 that Navient sent that to you or it was an e-mail
10 sent from Navient that was later provided to you?
11 A. I had requested background information on Mrs.
12 Henderson, and Navient was responding via e-mail
13 with that background information.
14 Q. Okay. Aside from that e-mail identifying the
15 vendors who called Ms. Henderson, have you made
16 any other efforts to obtain information from
17 Navient or any of the vendors relating to the
18 calls made to Ms. Henderson?
19 A. No.
20 Q. Has Navient subsequently provided any of that
21 information to you?
22 A. Not that I'm aware of.
23 Q. What about any of the vendors themselves?
24 A. No.
25 Q. You mentioned that you had -- that in response to

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1 the filing of the plaintiff's Complaint, you
2 weren't aware of any investigation into those
3 vendors' calling practices by USA Funds; correct?
4 A. Correct.
5 Q. Do you know whether USA Funds requested that those
6 vendors assess their own internal practices to
7 determine whether the calls were proper or not?
8 A. None that I'm aware of.
9 Q. Did USA Funds do any investigation to determine
10 whether a refund or a credit against an
11 outstanding balance was appropriate for Ms.
12 Henderson's account?
13 A. None that I'm aware of.
14 MR. LARRY: I think now is a good
15 time for the one o'clock break.
16 MS. SIMONETTI: Okay, sounds good.
17 (At this time, a recess was taken.)
18 Q. Mr. Tharp, we talked a bit a few minutes ago
19 before the break about the e-mail you received
20 from Navient. I just wanted to talk about that
21 real quick. Is your e-mail address
22 kevin.tharp@usafunds.org?
23 A. Yes.
24 Q. Do you recall the e-mail address that the e-mail
25 from Navient came from or who it was?

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1 A. I think it came from Mark Verbrugge.
2 Q. Do you know his e-mail address?
3 A. I believe it's Mark -- you know what, I don't
4 know. It's in my Rolodex, and -- I'm sorry.
5 Q. Not a problem. Okay. So you mentioned that
6 the -- in the course of reviewing the information
7 that was available to you about Ms. Henderson's
8 account, were you able to tell when her last
9 payment was?
10 A. I could tell. I don't remember looking at it
11 specifically.
12 Q. And we talked a bit earlier, as well, about the
13 auditing process and how the borrower accounts are
14 randomly selected. Do you know whether Ms.
15 Henderson's account was ever included in the
16 audit?
17 A. Not that I'm aware of.
18 Q. Is that something you'd be able to determine?
19 A. I can ask the auditors. I don't know that they
20 would even know.
21 Q. Okay. If we go back to Exhibit 4 which was the
22 audit report, this one --
23 A. Yes.
24 Q. You should get it out. If you turn to Appendix A
25 for that, so near the end.

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1 it.
2 Q. And you also talked earlier about the situations
3 in which your counterparts at Navient would e-mail
4 you to inform you of either a trend of borrower
5 complaints or a particularly important borrower
6 complaint that might come through. Would those
7 e-mails be retained beyond sort of the normal
8 retention period?
9 A. No.
10 Q. So they would be deleted along the timelines of
11 whatever the standard deletion period is?
12 A. Correct.
13 Q. Do you know what that timeline is?
14 A. Depending on the document, it could be anywhere
15 between 5 and 10 years.
16 Q. Okay. And do you know what the timeline is for
17 e-mails that are deleted, deleted within the
18 inbox, how long they stay in the trash or
19 something?
20 A. I don't know that.
21 Q. What about e-mails that are not deleted, so
22 e-mails that are read but never deleted by the
23 recipient?
24 A. The company has a standard, but I don't know what
25 it is.

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1 Q. Okay.
2 A. They're auto-deleted, I believe.
3 Q. Do you know whether that is in excess of a year?
4 A. I don't know.
5 MR. LARRY: That's all I have for
6 now. As I said earlier, we're going to follow up
7 regarding the documents that we believe should
8 have been produced as an attachment with some of
9 the audit guide and other things, but those are
10 all the questions I have for now. We're done.
11 MS. SIMONETTI: Last time, we agreed
12 that you would send the transcript to me and then
13 I think that we agreed that it would be 30 days
14 after. I think that still works.
15 MR. LARRY: Can we do a rough draft,
16 but I don't need the expedite this time.
17 MS. SIMONETTI: Yeah, I'd like a
18 rough, too.
19
20
21 (Ending time: 1:28 p.m.)
22
23
24
25


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1 STATE OF _____)
2)
3 COUNTY OF _____)
4
5 I, the undersigned, declare under penalty of
6 perjury that I have read the foregoing transcript,
7 and I have made any corrections, additions, or
8 deletions that I was desirous of making; that the
9 foregoing is a true and correct transcript of my
10 testimony contained therein.
11 Executed this _____ day of _____, 20____,
12 at:
13
14
15
16
17
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19 _____
20 KEVIN W. THARP
21
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1 DEPONENT'S CHANGES OR CORRECTIONS
2 Note: If you are adding to your testimony, print
3 the exact words you want to add. If you are deleting
4 from your testimony, print the exact words you want
5 to delete. Specify with "Add" or "Delete" and sign
6 this form.
7
8 DEPOSITION OF: KEVIN W. THARP
9 CASE: HENDERSON V. UNITED STUDENT AID FUNDS
10 DATE OF DEPOSITION: MARCH 8, 2016
11
12 PAGE LINE CHANGE/ADD/DELETE
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25	Deponent's Signature _____ Date _____			

1	PAGE	LINE	CHANGE/ADD/DELETE	Page 146
2			REPORTER'S CERTIFICATE	
3			I, LINDA C. CALLAHAN, a Court Reporter and	
4			Notary Public, certify:	
5			That the foregoing proceedings were taken	
6			before me at the time and place therein set forth,	
7			at which time, the witness was put under oath by	
8			me;	
9			That the testimony of the witness, the	
10			questions propounded, and all objections and	
11			statements made at the time of the examination	
12			were recorded stenographically by me and were	
13			thereafter transcribed;	
14			That the foregoing is a true and correct	
15			transcript of my shorthand notes so taken.	
16			I further certify that I am not a relative or	
17			employee of any attorney of the parties, nor	
18			financially interested in the action.	
19			I declare under penalty of perjury under the	
20			laws of Indiana that the foregoing is true and	
21			correct.	
22			Dated this 20th day of March, 2016.	
23				
24			_____ LINDA C. CALLAHAN	
25			My county of residence: Hamilton	
			My commission expires: 11/3/16	